

## SENATE BILL NO. 189

INTRODUCED BY COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE IMPAIRMENT MEDICAL EVALUATION PROCEDURES FOR WORKERS' COMPENSATION APPLY TO IMPAIRMENT RATING DISPUTES; AMENDING SECTIONS 39-71-605 AND 39-71-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 39-71-605, MCA, is amended to read:

**"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost.** (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial

1 experience in the particular field of medicine concerned with the matters presented by the dispute. The  
2 physician, psychologist, or panel making the examination shall file a written report of findings with the claimant  
3 and insurer for their use in the determination of the controversy involved. The requesting party shall pay the  
4 physician, psychologist, or panel for the examination.

5 (3) As used in this section, a panel includes a practitioner having substantial experience in the field of  
6 medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner  
7 to act as a treating physician, as defined in 39-71-116, and may include a psychologist.

8 (4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities  
9 evaluation conducted by a licensed physical or occupational therapist.

10 ~~(5) This section does not apply to impairment evaluations provided for in 39-71-711."~~

11  
12 **Section 2.** Section 39-71-711, MCA, is amended to read:

13 **"39-71-711. Impairment evaluation -- ratings.** (1) An impairment rating:

14 (a) is a purely medical determination and must be determined by an impairment evaluator after a  
15 claimant has reached maximum healing;

16 (b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment  
17 published by the American medical association;

18 (c) must be expressed as a percentage of the whole person; and

19 (d) must be established by objective medical findings.

20 (2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical  
21 doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the  
22 claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be  
23 followed.

24 (3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating  
25 physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter  
26 12.

27 (4) Disputes over impairment ratings are not subject to the provisions of 39-71-605."

28  
29 **NEW SECTION. Section 3. Effective date -- applicability.** [This act] is effective on passage and  
30 approval and applies to impairment evaluations completed on or after [the effective date of this act].

31 - END -